

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN D. COTTON,

Petitioner,

v.

Case Number 07-10291-BC
Honorable Thomas L. Ludington

KENNETH McKEE,

Respondent.

**ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION
FOR ENLARGEMENT OF TIME TO FILE AN APPLICATION FOR A CERTIFICATE
OF APPEALABILITY AND DENYING PETITIONER'S MOTION TO PROCEED IN
FORMA PAUPERIS ON APPEAL**

On October 20, 2008, this Court denied Petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254. The Court also denied Petitioner a certificate of appealability and leave to proceed in forma pauperis on appeal [Dkt. # 21]. On November 21, 2008, Petitioner filed a notice of appeal [Dkt. # 23]. Petitioner has now filed a motion for an enlargement of time to file an application for a certificate of appealability [Dkt. # 25] based on the difficulty he has experienced in gaining access to the prison law library. Petitioner seeks an extension of time through February 19, 2009. The Court finds that an extension of time is justified through January 16, 2009, and will grant Petitioner's motion to the extent that it is consistent with that conclusion. The Court also notes that Petitioner's application should be filed in the Sixth Circuit Court of Appeals, as this Court has already denied Petitioner a certificate of appealability. *See* Fed. R. App. P. 22(b)(1).

Petitioner has also filed a motion to proceed in forma pauperis on appeal [Dkt. # 26]. The Court has already denied Petitioner leave to proceed in forma pauperis on appeal, thus, the Court construes the motion as a motion for reconsideration, *see* E.D. Mich. LR 7.1(h), of its earlier

determination that an appeal would be frivolous under 28 U.S.C. 1915(a)(3). However, when a motion for reconsideration presents the same issues already ruled upon by the court, either expressly or by reasonable implication, it will not be granted. *See Williams v. McGinnis*, 192 F. Supp. 2d 757, 759 (E.D. Mich. 2002). A motion for reconsideration should be granted only if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from correction of the defect. *Id.* Petitioner has not advanced any arguments to show that the Court erred in denying him leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915(a)(3). Thus, his motion to proceed in forma pauperis on appeal will be denied.

Accordingly, it is **ORDERED** that Petitioner's motion for enlargement of time to file an application for a certificate of appealability [Dkt. # 25] is **GRANTED IN PART** and **DENIED IN PART**. Petitioner shall file his application in the Sixth Circuit Court of Appeals on or before **January 16, 2009**.

It is further **ORDERED** that Petitioner's motion to proceed in forma pauperis on appeal [Dkt. # 26] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 4, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 4, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS